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HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. No.94 of 2007

APPLICANT

Laxminarayan Upadhayay, s/o
Devsharan Upadhayay, aged about
39 years, Occupation Photo Studio
Shop, R/o Bajrang Chowk, Police
Station Gariyaband, Distt. Raipur
C.G)

Versus

RESPONDENT

1. State of Chhattisgarh, P.S.
Gariyaband, Distt. Raipur (C.G).
2. Sunil Kumar, s/o Bhikham
Devangan, aged about 29 years, r/o
Village Majarkata (Gariyaband)
Tahsil Gariyaband, Distt. Raipur
(C.G)
3. Talim Khan, s/o Habeeb Khan, aged
about 33 years, Occupation STD
PCO Village Malgaon, Police Station
and Tahsil Gariyaband, Distt.
Raipur (C.G).
4. Shiva Sinha, s/o Mahesh Ram
Sinha, aged about 35 years,
Occupation Teacher, R/o
Gariyaband, P.S. and Tahsil
Gariyaband, Distt. Raipur (C.G)

Criminal Revision u/s 482 of the Code of Criminal Procedure

Appearance:

Smt. Hamida Siddiqui, counsel for the applicant.

Shri M.P.S. Bhatia, Panel Lawyer, for the State, on advance
copy.

ORAL ORDER
(18.7.2007)

Sunil Kumar Sinha, J.

Heard on admission.

The petitioner who was arrayed as an accused in complaint
case No.9/2006 pending in the Court of J.M.F.C., Gariyaband, has
challenged the validity of registration of criminal case and issuance

of process against him by the said Court on a criminal complaint filed by respondent no.2.

The brief facts are that on dispute of certain forged document pertaining to a loan transaction, a complaint case was filed by respondent no.2 before the Court of J.M.F.C. Gariyaband, on which an enquiry was conducted and statements of witnesses were recorded and then after going through the entire material on record, the Magistrate directed for registration of the case u/s 420 of I.P.C. and also directed for issuance of process against the petitioner.

Learned counsel for the petitioner argues that prior to this, a criminal case was registered against respondent no.2 on the report of petitioner u/s 420 I.P.C., and after such action taken by the petitioner, respondent no.2, in retaliation, has filed this criminal complaint. She argues that in fact, no prima facie case was made out against the petitioner as the action itself was malafide.

In the matter of Chandra Deo Singh -vs- Prokash Chandra Bose alias Chabi Bose & another, AIR 1963 S.C. 1430, the apex Court held that for determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. As stated in sub-section (1) of Section 202 itself, the object of the enquiry is to ascertain the truth or falsehood of the complaint, but the Magistrate making the enquiry has to do this

only with reference to the intrinsic quality of the statements made before him at the enquiry which would naturally mean the complaint itself, the statement on oath made by the complainant and the statements made before him by persons examined at the instance of the complaint. The Apex Court further held that since the object of an enquiry under section 202 is to ascertain whether the allegations made in the complaint are intrinsically true, the Magistrate acting under section 203 has to satisfy himself that there is sufficient ground for proceeding. In order to come to this conclusion, he is entitled to consider the evidence taken by him or recorded in an enquiry under section 202, or statements made in an investigation under that section, as the case may be. He is not entitled to rely upon any material besides this. Where there is prima facie evidence, even though an accused may have a defence that the offence is committed by some other person or persons, the matter has to be left to be decided by the appropriate forum at the appropriate stage and issue of process cannot be refused.

The wordings of section 203 are also clear to show that if, after consideration of the statements on oath (if any) of the complainant and all the witnesses and the result of the enquiry or investigation, if any, u/s 202, the Magistrate is of the opinion that there is no "sufficient ground" for proceeding, he shall dismiss the complaint and in every such case, he shall briefly record his reasons for so doing. The words "sufficient grounds" used by the Legislature in section 203 is construed to mean the satisfaction that a prima facie case is made out against the persons accused by the evidence of the witnesses entitled to a reasonable degree of

Cr.M.P. 94/07

credit. This clearly means that if in the opinion of the Magistrate, a reasonable degree of credit is not attached to the testimony of the witness examined before him for the purpose of his satisfaction regarding prima facie case, and he is not satisfied, then, the Magistrate would be fully competent to dismiss the complaint under the provisions of section 203 Cr.P.C.

In the present case, the order sheet would show that after due enquiry, the Magistrate deemed it fit to register the case and ultimately exercising such jurisdiction, directed for issuance of process against the petitioner. The arguments regarding pendency of an earlier case between the parties and further the argument regarding malafide complaint are the matters of defence which were not to be considered at the time of issuance of process by the Magistrate. The Magistrate has issued the process on the basis of the prima facie case. The arguments advanced by learned counsel for the petitioner on these grounds cannot be accepted. In view of the above, I do not find any reason to interfere with the impugned order.

The petition has no merits and the same is dismissed at the motion stage itself.

Sd/-
SUNIL KUMAR SINHA
Judge